



## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

| In re Applica  | ation of:            | )                                      |
|--|----------------------|--|
|  | David T. Frederick   | )                                      |
| Serial No.:  | 09/288,685           | ) Art Unit 3651<br>)                   |
| Filed:   | <b>April 9, 1999</b> | ) Patent Examiner ) Jeffrey A. Shapiro |
| Title:   | Medical Cabinet With | )                                      |
|  | Adjustable Drawers   | )                                      |
| Box AF Commissioner for Patents Washington, D.C. 20231 |                      | RECEIVED  MAR 2 0 2002  GROUP 3600     |

Sir:

Appellant requests clarification of the Office Action ("Action") dated March 5, 2002.

## **Request For Clarification**

It is unclear from the record which rejections are currently pending in the Application.

The Action, as best understood, indicates that the Appeal Brief filed 12/26/01 (sic) is unsigned and requires a signed copy thereof. (The certificate of mailing shows that the Appeal Brief was filed 12/17/01). This indicates that the rejections to which the Appeal Brief pertains are still in effect. Furthermore, it is unclear whether the Action is an Examiner's Answer.

However, the Action also apparently refers to other rejections different from which the appeal was taken, i.e., new grounds of rejection. Yet there is no indication or statement in the Action that prosecution has been reopened. Nor is the Action in compliance with the procedural rules of the Office (MPEP § 1208.02) for reopening prosecution. Furthermore, because of the Action's requirement for a signed copy of the Appeal Brief filed 12/17/01, one would conclude that prosecution has not been reopened. That is, why would the Office require a signed copy of the Appeal Brief filed 12/17/01 if they were reopening prosecution? If the Office was reopening prosecution then the Appeal Brief filed 12/17/01 would be moot.

Additionally, Appellant has not been presented any evidence that the Examiner obtained supervisory approval to reopen prosecution after the appeal (MPEP § 1208.01, 1208.02).

Appellant requests evidence of the approval on his copy of the Office action.

Furthermore, Appellant notes that the Action's rejection involving numbered paragraph 7 (Action page 4) appears to rely on Krivec. Appellant's previously filed Appeal Brief already addressed rejections based on Krivec. Thus, the Action's reliance on Krivec is another example that prosecution has not been reopened and that Appellant's Appeal Brief remains in effect.

Thus, it is unclear whether the Action is (1) a Notification of defective appeal brief; (2) a reopening of prosecution; or (3) an Examiner's Answer. Thus, the Action is defective.

Until the Office removes this ambiguity from the unclear and confusing record, Appellant has to conclude that the Action, as best understood, is not an Examiner's Answer and that prosecution has not been reopened. Thus, the rejections from which their appeal was taken are the only rejections pending. Therefore, Appellant's Appeal Brief remains in effect.

## **Defective Appeal Brief**

Appellant respectfully requests reconsideration and withdrawal of the apparent. holding of defective appeal brief. The Action indicated that the Appeal Brief filed 12/17/01 was unsigned. A signed copy was required. Please find enclosed signed copies of the Appeal Brief filed 12/17/01. Thus, Appellant requests that the holding of defective appeal brief be removed.

Appellant's Appeal Brief was asserted by the Office to be defective because it exceeded an appeal brief size limit. That is, the Appeal Brief was held to exceed an alleged 30-page, 14,000 words, or 1,300 lines limitation. Appellant maintains that this is not a legal basis for holding the Appeal Brief defective and in noncompliance with 37 C.F.R. § 1.192(c).

Additionally, unless the Office is holding all appeal briefs to a specific (lower) size limit (which it is not), then the Office's Action against Appellant constitutes action which is arbitrary and capricious, and a violation of Appellant's Due Process and Equal Protection rights. The Office is hereby notified that it may be liable for all costs incurred by Appellant in responding to the arbitrary and capricious and frivolous allegation regarding appeal brief size limitations.

The holding of defective appeal brief should be withdrawn for the reasons presented herein. The undersigned will be happy to discuss any aspect of the Application by telephone at the Office's convenience.

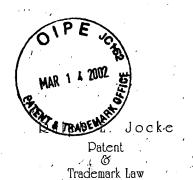
Respectfully submitted,

Ralph E. Jocke

Reg. No. 31,029

WALKER & JOCKE 231 South Broadway Medina, Ohio 44256

(330) 721-0000



Walker

a legal professional association

March 14, 2002

Box AF Commissioner for Patents Washington, D.C. 20231

RECEIVED MAR 2:0 2002

GROUP 3600

Attn: Art Unit 3651

Patent Examiner Jeffrey A. Shapiro

**Application Serial No.:** Re:

09/288,685

**Applicants:** 

David T. Frederick

Title:

Medical Cabinet With Adjustable Drawers

Docket No.: D-1108

Sir:

Please find enclosed Applicant's Response to the Office Action dated March 5, 2002 for filing in the above identified Application. Also enclosed is the requested signed Appeal Brief of Appellant (previously filed December 17, 2001) in triplicate for filing in the above identified application.

No fee is deemed required. However, the Commissioner is authorized to charge any necessary fee associated with this Response and any other fee due to Deposit Account 10-0637.

Very truly yours,

Ralph E. Jocke Reg. No. 31,029

## CERTIFICATE OF MAILING BY EXPRESS MAIL

I hereby certify that this document and the documents indicated as enclosed herewith are being deposited with the U.S. Postal Service as Express Mail Post Office to addressee in an envelope addressed to Commissioner of Patents and Trademarks, Washington, D.C. 20231 this **/ ∀אי** day of March 2002...

EL820018237US

Express Mail Label No.

330 • 721 • 0000 MEDINA

330 • 225 • 1669 - CLEVELAND

330 • 722 • 6446 **FAC&IMILE** 

rej@walkerandjocke.com E-MAIL

231 80uth Broadway,

Medina,

Ohio U.S.A.

44256-2601